

Executive Summary

After years of debate, a broad international consensus finally developed on the need to address the problem of business-related bribes to foreign public officials. Adoption in 1997 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions marked an important step forward in this effort. The Convention was signed by all twenty-nine OECD members¹ and Argentina, Brazil, Bulgaria, Chile, and the Slovak Republic. It entered into force on February 15, 1999.

This second annual report under the International Anti-Bribery and Fair Competition Act of 1998 (IAFCA) reviews the continued progress that signatory countries have made in implementing the Convention. The report was prepared by the Department of Commerce's International Trade Administration and the Office of General Counsel working in close cooperation with the State Department, the Justice Department, the Treasury Department, the Office of the United States Trade Repre-

sentative, and the staff of the United States Securities and Exchange Commission.

The United States and other signatories face a formidable challenge in seeking to advance the goals of the Convention. The bribery of foreign public officials is a deeply embedded practice in many countries. For example, in the period from May 1994 through April 2000, we received reports that the outcome of 353 contracts valued at \$165 billion may have been affected by bribery involving foreign firms. U.S. firms are alleged to have lost 92 of these contracts worth approximately \$26 billion because of this corrupt practice. Often U.S. companies are even discouraged from participating in business transactions because they know that the outcomes are influenced by bribes. But the damage is not limited to billions of dollars in lost exports. Bribery of public officials in commercial dealings undermines democracy and good governance and retards economic development. It is especially damaging to developing countries.

As implementation of the Convention is still in an early stage, this second report continues to focus on national implementing legislation and its conformity with the obligations that all signatories have accepted. The assessment of implementing legislation in Chapter 2 of the report represents the views of the U.S. agencies that prepared this report. It is based on information from a variety of sources, including the implement-

¹The member states of the OECD are Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

ing legislation of parties to the Convention, reporting of U.S. embassies, publications, private sector comments, and other public sources. Our views are not necessarily shared by other governments.

We have focused particularly on implementing legislation because the legal framework is critical for parties to fulfill their commitment to criminalize the bribery of foreign public officials. As parties begin confronting cases involving the bribery of foreign public officials, attention will shift to examining enforcement of the prohibitions on bribery.

The report also addresses other issues identified in the IAFCA. Of particular note, the report reviews steps taken by signatories to implement the OECD recommendation to disallow the tax deductibility of bribes. It assesses antibribery programs and transparency in several major international organizations. Finally, the report examines progress made on advancing other goals in the IAFCA relating to fair competition in global satellite communication services.

Major Findings

■ Over the past year, further progress has been made on the first priority of ensuring that all signatories deposit an instrument of ratification with the OECD. As of June 10, 2000, twenty-one of the thirty-four signatories, representing approximately 78 percent of OECD exports, had deposited an instrument of ratification with the OECD secretariat. This is an increase of six countries since this time last year. Nevertheless, a number of significant exporting countries, including Brazil, France, Italy, and the Netherlands, have still not completed the necessary steps to bring the Convention into force. The United States will continue to press these countries to complete their legislative and ratification processes without further delay.

■ The procedures established by the OECD Working Group on Bribery to monitor implementation of the Convention have proven to be effective in providing a thorough, unbiased examination of national implementing legislation. The review process is continuing. Examination of implementing legislation to date has been rigorous, comprehensive, and frank in identifying shortcomings. Thus far, the Working Group has reviewed the implementing legislation of twenty-one countries, including the United States.

■ The Commerce, State, Justice, and Treasury departments and staff of the United States Securities and Exchange Commission are working together as a team to

monitor implementation and enforcement of the Convention. U.S. agencies have established a rigorous monitoring process that includes active participation in OECD meetings on the Convention, bilateral discussions with other governments on implementation issues, and careful tracking of bribery-related developments overseas. The following initiatives are helping to promote the goals of the Convention: a bribery hotline on the Commerce Department website; inclusion of relevant antibribery materials on the Justice Department website; publication by the State Department of a brochure for businesses on combating bribery and corruption; support for regional antibribery initiatives in Asia, Latin America, Africa, and the Balkans; and preparations for a second global anti-corruption conference in 2001.

■ Countries that have ratified the Convention have generally taken a serious approach to fulfilling their obligations on criminalizing the bribery of foreign public officials. The relevant legislation of twenty foreign countries is reviewed in this report. We have concerns about the implementation of the Convention by several countries, including Japan and the United Kingdom, whose current legislation appears inadequate to accomplish the goals of the Convention. Bilaterally and multilaterally within the Working Group on Bribery, the United States is urging countries to take action to correct deficiencies in implementing legislation.

■ Since the Convention has been in force for only a short time, it is still too early to make judgements regarding the effectiveness of enforcement measures. Now that the review of implementing legislation is well advanced, the United States is urging the Working Group on Bribery to begin the review of enforcement mechanisms before the end of 2000, as originally endorsed by OECD ministers. Future reports, therefore, should begin to develop a record of enforcement. As far as we have been able to determine, the United States remains the only country to have prosecuted persons for the bribery of foreign public officials.

■ Both government authorities and nongovernmental organizations have made greater efforts over the past year to promote public awareness of the Convention and support anticorruption initiatives. Notable efforts have been made by the governments of Australia, Bulgaria, Canada, the Czech Republic, Germany, Korea, Poland, the Slovak Republic, and Sweden. The United States continues to encourage all signatories to promote public awareness of the Convention and the importance of combating corruption.

■ Substantial progress has been achieved in implementing the OECD recommendation to eliminate any tax deductibility of bribes to foreign public officials. We remain concerned, however, about the effectiveness of some countries' actions to disallow tax deductibility. The United States, in cooperation with other OECD members, is providing technical assistance to the OECD's Fiscal Affairs Committee in order to improve its monitoring of national laws and practices and to help the Committee establish a more complete record of each signatory's legal, regulatory, and administrative framework for disallowing tax deductibility.

■ As the Convention enters into force for more signatories, greater attention is being given to considering new participants and using the OECD to strengthen antibribery efforts among interested nonsignatory countries. The most appropriate candidates for accession to the Convention are likely to be significant global or regional exporters whose governments are well equipped to take on the responsibilities of implementing the Convention. The OECD has undertaken initial outreach activities with these criteria in mind.

■ The United States has succeeded in keeping issues related to strengthening the Convention on the agenda of the Working Group on Bribery despite a lack of support from many signatories. We have made special efforts to focus attention on issues of particular importance to the United States: bribery acts in relation to foreign political parties, party officials, and candidates for public office. Developing support for addressing our key issues of concern is expected to require a longer-term effort as we differ sharply with other Working Group members on the need to expand the scope of the Convention. Other issues on the Working Group agenda relating to the Convention include bribery of foreign public officials as a predicate offense for money laundering legislation and the roles of foreign subsidiaries and offshore financial centers in bribery transactions.

■ International organizations are undertaking useful initiatives to promote cooperation on combating bribery and to ensure transparency and good business practices within their own programs. With active U.S. support, major international financial institutions, such as the International Monetary Fund, the World Bank, and the regional multilateral development banks, have intensified efforts to help client countries prevent corruption and improve the efficiency of funded projects. Noteworthy activities are also continuing in the OECD, the Organization of American States, the United Nations, and the World Trade Organization. The Organization for Secu-

rity and Cooperation in Europe, which is playing an important role in promoting peace and economic transition in former communist states, has raised the profile of anticorruption issues among its fifty-five members. INTEL-SAT, a major intergovernmental satellite organization, has maintained active programs to address transparency and antibribery issues in its operations.

■ U.S. business associations and nongovernmental organizations, such as Transparency International, are playing a key role in helping the U.S. government monitor implementation of the Convention and educating the public and the business community in signatory countries on the need to enact and enforce antibribery laws. The U.S. government will continue to involve the private sector in its efforts to monitor the Convention and promote its goals.

■ International satellite organizations have, in the past, enjoyed advantages through the use of privileges and immunities that have limited direct regulatory oversight and insulated them from competition laws. Such advantages appear to be diminishing as international satellite organizations face increased competition and move toward privatization and as the global trend toward open markets accelerates. Other advantages in tax treatment, regulatory treatment, government ownership, or government contracts continue to exist, but are likewise expected to diminish as global privatization spreads. In a step toward pro-competitive privatization, INTELSAT transferred five of its satellites to the private Dutch corporation New Skies Satellites, N.V., on November 30, 1998. Inmarsat completed its privatization on April 15, 1999. Accordingly, the U.S. government ceased its oversight of Inmarsat acting through Comsat. The ORBIT Act, recently enacted by Congress, provides a vehicle to monitor the extent to which privatization reduces the advantages traditionally accorded international satellite organizations.

Since the last report was provided to Congress in July 1999, signatory countries have made considerable progress in implementing the Convention. Much work, however, remains to be done in order to make the Convention an effective tool for combating the bribery of foreign public officials in international business transactions. All signatory countries need to ratify the Convention and put in place appropriate implementing legislation and enforcement mechanisms. Peer monitoring will play a key role in ensuring that countries take these steps. The Commerce Department remains committed to working closely with other U.S. agencies and the private sector to support effective monitoring of the Convention.

